

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

**DAVID V. SMITH, SR.,**

**Petitioner,**

**v.**

**Civil Action No. 2:10cv86  
(Maxwell)**

**MIKE LAWSON and  
JIM RUBENSTEIN,**

**Respondents.**

**ORDER**

On July 29, 2010, Magistrate Judge David J. Joel filed his Report and Recommendation, wherein the parties were directed, in accordance with 28 U.S.C. § 636(b)(1), to file with the Clerk of Court any written objections within fourteen (14) days after being served with a copy of the Report and Recommendation ("R&R") (Doc. 9). No objections to the Magistrate Judge's R&R have been filed. Accordingly, the Court will proceed with consideration of the R&R, reviewing for clear error.<sup>1</sup>

Upon examination of the report from the Magistrate Judge, it appears to the Court that the issues raised by the Petitioner's Application for Habeas Corpus, filed pursuant to 28 U.S.C. § 2241, were thoroughly considered by Magistrate Judge Joel in his R&R. Moreover, this Court, upon a review for clear error, is of the opinion that the R&R accurately reflects the law applicable to this case. Therefore, it is

**ORDERED** that Magistrate Judge Joel's Report and Recommendation (Doc. 9) be, and the same hereby is, **ADOPTED**. Accordingly, it is

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<sup>1</sup>The failure of a party to object to a Report and Recommendation waives the party's right to appeal from a judgment of this Court based thereon and, additionally, relieves the Court of any obligation to conduct a *de novo* review of the issues presented. See ***Wells v. Shriners Hospital***, 109 F.3d 198, 199-200 (4th Cir. 1997); ***Thomas v. Arn***, 474 U.S. 140, 148-153 (1985).

**ORDERED** that the petitioner's Application for Habeas Corpus Pursuant to 28 U.S.C. § 2241 (Doc. 1) shall be, and the same hereby is, **DENIED** and **DISMISSED without prejudice** to the extent that the petitioner may re-file his claims as a civil rights action. It is further

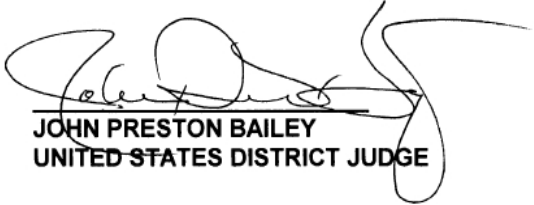
**ORDERED** that the Clerk shall enter judgment for the respondents. It is further

**ORDERED** that the above-styled action shall be **STRICKEN** from the docket of this Court. It is further

**ORDERED** that, if a party should desire to appeal the decision of this Court, written notice of appeal must be received by the Clerk of this Court within thirty (30) days from the date of the entry of the Judgment Order, pursuant to Rule 4 of the Federal Rules of Appellate Procedure. The \$5.00 filing fee for the notice of appeal and the \$450.00 docketing fee should also be submitted with the notice of appeal. In the alternative, at the time the notice of appeal is submitted, the petitioner may, in accordance with the provisions of Rule 24(a) of the Federal Rules of Appellate Procedure, seek leave to proceed *in forma pauperis* from the United States Court of Appeals for the Fourth Circuit.

The Clerk of Court is directed to transmit a copy of this Order to all parties appearing herein and to mail a copy to the *pro se* petitioner.

**DATED:** October 19, 2010.



JOHN PRESTON BAILEY  
UNITED STATES DISTRICT JUDGE